

**SALES AND USE TAX REVISIONS**

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Steve Eliason**

Senate Sponsor: Wayne A. Harper

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**LONG TITLE**

**Committee Note:**

The Revenue and Taxation Interim Committee recommended this bill.

Legislative Vote: 12 voting for 0 voting against 6 absent

**General Description:**

This bill amends the requirements governing when a seller has to pay or collect and remit sales and use tax.

**Highlighted Provisions:**

This bill:

- ▶ repeals the requirement that a seller has to pay or collect and remit the sales and use tax if the seller sells tangible personal property, products transferred electronically, or services for storage, use, or consumption in the state in more than a certain number of separate transactions; and

- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

**Utah Code Sections Affected:**

AMENDS:

**59-12-107**, as last amended by Laws of Utah 2022, Chapter 273



28 **59-12-107.6**, as last amended by Laws of Utah 2023, Chapter 361



30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section **59-12-107** is amended to read:

32 **59-12-107. Definitions -- Collection, remittance, and payment of tax by sellers or**  
33 **other persons -- Returns -- Reports -- Direct payment by purchaser of vehicle -- Other**  
34 **liability for collection -- Rulemaking authority -- Credits -- Treatment of bad debt --**  
35 **Penalties and interest.**

36 (1) As used in this section:

37 (a) "Ownership" means direct ownership or indirect ownership through a parent,  
38 subsidiary, or affiliate.

39 (b) "Related seller" means a seller that:

40 (i) meets one or more of the criteria described in Subsection (2)(a)(i); and

41 (ii) delivers tangible personal property, a service, or a product transferred electronically  
42 that is sold:

43 (A) by a seller that does not meet one or more of the criteria described in Subsection  
44 (2)(a)(i); and

45 (B) to a purchaser in the state.

46 (c) "Substantial ownership interest" means an ownership interest in a business entity if  
47 that ownership interest is greater than the degree of ownership of equity interest specified in 15  
48 U.S.C. Sec. 78p, with respect to a person other than a director or an officer.

49 (2) (a) Except as provided in Subsection (2)(f), Section **59-12-107.1**, or Section  
50 **59-12-123**, and subject to Subsection (2)(g), each seller shall pay or collect and remit the sales  
51 and use taxes imposed by this chapter if within this state the seller:

52 (i) has or utilizes:

53 (A) an office;

54 (B) a distribution house;

55 (C) a sales house;

56 (D) a warehouse;

57 (E) a service enterprise; or

58 (F) a place of business similar to Subsections (2)(a)(i)(A) through (E);

59 (ii) maintains a stock of goods;  
60 (iii) regularly solicits orders, regardless of whether or not the orders are accepted in the  
61 state, unless the seller's only activity in the state is:

62 (A) advertising; or

63 (B) solicitation by:

64 (I) direct mail;

65 (II) electronic mail;

66 (III) the Internet;

67 (IV) telecommunications service; or

68 (V) a means similar to Subsection (2)(a)(iii)(A) or (B);

69 (iv) regularly engages in the delivery of property in the state other than by:

70 (A) common carrier; or

71 (B) United States mail; or

72 (v) regularly engages in an activity directly related to the leasing or servicing of  
73 property located within the state.

74 (b) A seller is considered to be engaged in the business of selling tangible personal  
75 property, a product transferred electronically, or a service for use in the state, and shall pay or  
76 collect and remit the sales and use taxes imposed by this chapter if:

77 (i) the seller holds a substantial ownership interest in, or is owned in whole or in  
78 substantial part by, a related seller; and

79 (ii) (A) the seller sells the same or a substantially similar line of products as the related  
80 seller and does so under the same or a substantially similar business name; or

81 (B) the place of business described in Subsection (2)(a)(i) of the related seller or an in  
82 state employee of the related seller is used to advertise, promote, or facilitate sales by the seller  
83 to a purchaser.

84 (c) Subject to Section [59-12-107.6](#), each seller that does not meet one or more of the  
85 criteria provided for in Subsection (2)(a) or is not a seller required to pay or collect and remit  
86 the sales and use taxes imposed by this chapter under Subsection (2)(b) shall pay or collect and  
87 remit the sales and use tax imposed by this chapter if the seller:

88 (i) sells tangible personal property, products transferred electronically, or services for  
89 storage, use, or consumption in the state; and

90 (ii) in either the previous calendar year or the current calendar year~~[-(A)]~~, receives  
91 gross revenue from the sale of tangible personal property, products transferred electronically, or  
92 services for storage, use, or consumption in the state of more than \$100,000~~[-or]~~.

93 ~~[(B) sells tangible personal property, products transferred electronically, or services for~~  
94 ~~storage, use, or consumption in the state in 200 or more separate transactions.]~~

95 (d) A seller that does not meet one or more of the criteria provided for in Subsection  
96 (2)(a) or is not a seller required to pay or collect and remit sales and use taxes under Subsection  
97 (2)(b), Subsection (2)(c), or Section 59-12-107.6 may voluntarily:

- 98 (i) collect a tax on a transaction described in Subsection 59-12-103(1); and
- 99 (ii) remit the tax to the commission as provided in this part.

100 (e) The collection and remittance of a tax under this chapter by a seller that is  
101 registered under the agreement may not be used as a factor in determining whether that seller is  
102 required by this Subsection (2) to:

103 (i) pay a tax, fee, or charge under:

- 104 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- 105 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
- 106 (C) Section 19-6-714;
- 107 (D) Section 19-6-805;
- 108 (E) Title 69, Chapter 2, Part 4, Prepaid Wireless Telecommunications Service Charges;

109 or

110 (F) this title; or

111 (ii) collect and remit a tax, fee, or charge under:

- 112 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- 113 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
- 114 (C) Section 19-6-714;
- 115 (D) Section 19-6-805;
- 116 (E) Title 69, Chapter 2, Part 4, Prepaid Wireless Telecommunications Service Charges;

117 or

118 (F) this title.

119 (f) A person shall pay a use tax imposed by this chapter on a transaction described in  
120 Subsection 59-12-103(1) if:

- 121 (i) the seller did not collect a tax imposed by this chapter on the transaction; and  
122 (ii) the person:
- 123 (A) stores the tangible personal property or product transferred electronically in the  
124 state;  
125 (B) uses the tangible personal property or product transferred electronically in the state;  
126 or  
127 (C) consumes the tangible personal property or product transferred electronically in the  
128 state.
- 129 (g) The ownership of property that is located at the premises of a printer's facility with  
130 which the retailer has contracted for printing and that consists of the final printed product,  
131 property that becomes a part of the final printed product, or copy from which the printed  
132 product is produced, shall not result in the retailer being considered to have or maintain an  
133 office, distribution house, sales house, warehouse, service enterprise, or other place of  
134 business, or to maintain a stock of goods, within this state.
- 135 (3) (a) Except as provided in Section [59-12-107.1](#), a seller shall collect a tax under this  
136 chapter from a purchaser.
- 137 (b) A seller may not collect as tax an amount, without regard to fractional parts of one  
138 cent, in excess of the tax computed at the rates prescribed by this chapter.
- 139 (c) (i) Each seller shall:
- 140 (A) give the purchaser a receipt for the tax collected; or  
141 (B) bill the tax as a separate item and declare the name of this state and the seller's  
142 sales and use tax license number on the invoice for the sale.
- 143 (ii) The receipt or invoice is prima facie evidence that the seller has collected the tax  
144 and relieves the purchaser of the liability for reporting the tax to the commission as a  
145 consumer.
- 146 (d) A seller is not required to maintain a separate account for the tax collected, but is  
147 considered to be a person charged with receipt, safekeeping, and transfer of public money.
- 148 (e) Taxes collected by a seller pursuant to this chapter shall be held in trust for the  
149 benefit of the state and for payment to the commission in the manner and at the time provided  
150 for in this chapter.
- 151 (f) If any seller, during any reporting period, collects as a tax an amount in excess of

152 the lawful state and local percentage of total taxable sales allowed under this chapter, the seller  
153 shall remit to the commission the full amount of the tax imposed under this chapter, plus any  
154 excess.

155 (g) If the accounting methods regularly employed by the seller in the transaction of the  
156 seller's business are such that reports of sales made during a calendar month or quarterly period  
157 will impose unnecessary hardships, the commission may accept reports at intervals that, in the  
158 commission's opinion, will better suit the convenience of the taxpayer or seller and will not  
159 jeopardize collection of the tax.

160 (h) (i) For a purchase paid with specie legal tender as defined in Section 59-1-1501.1,  
161 and until such time as the commission accepts specie legal tender for the payment of a tax  
162 under this chapter, if the commission requires a seller to remit a tax under this chapter in legal  
163 tender other than specie legal tender, the seller shall state on the seller's books and records and  
164 on an invoice, bill of sale, or similar document provided to the purchaser:

165 (A) the purchase price in specie legal tender and in the legal tender the seller is  
166 required to remit to the commission;

167 (B) subject to Subsection (3)(h)(ii), the amount of tax due under this chapter in specie  
168 legal tender and in the legal tender the seller is required to remit to the commission;

169 (C) the tax rate under this chapter applicable to the purchase; and

170 (D) the date of the purchase.

171 (ii) (A) Subject to Subsection (3)(h)(ii)(B), for purposes of determining the amount of  
172 tax due under Subsection (3)(h)(i), a seller shall use the most recent London fixing price for the  
173 specie legal tender the purchaser paid.

174 (B) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
175 commission may make rules for determining the amount of tax due under Subsection (3)(h)(i)  
176 if the London fixing price is not available for a particular day.

177 (4) (a) Except as provided in Subsections (5) through (7) and Section 59-12-108, the  
178 sales or use tax imposed by this chapter is due and payable to the commission quarterly on or  
179 before the last day of the month next succeeding each quarterly calendar period.

180 (b) (i) Each seller shall, on or before the last day of the month next succeeding each  
181 quarterly calendar period, file with the commission a return for the preceding quarterly period.

182 (ii) The seller shall remit with the return under Subsection (4)(b)(i) the amount of the

183 tax required under this chapter to be collected or paid for the period covered by the return.

184 (c) Except as provided in Subsection (5)(c), a return shall contain information and be in  
185 a form the commission prescribes by rule.

186 (d) (i) Subject to Subsection (4)(d)(ii), the sales tax as computed in the return shall be  
187 based on the total nonexempt sales made during the period for which the return is filed,  
188 including both cash and charge sales.

189 (ii) For a sale that includes the delivery or installation of tangible personal property at a  
190 location other than a seller's place of business described in Subsection (2)(a)(i), if the delivery  
191 or installation is separately stated on an invoice or receipt, a seller may compute the tax due on  
192 the sale for purposes of Subsection (4)(d)(i) based on the amount the seller receives for that  
193 sale during each period for which the seller receives payment for the sale.

194 (e) (i) The use tax as computed in the return shall be based on the total amount of  
195 purchases for storage, use, or other consumption in this state made during the period for which  
196 the return is filed, including both cash and charge purchases.

197 (ii) (A) As used in this Subsection (4)(e)(ii), "qualifying purchaser" means a purchaser  
198 that is required to remit taxes under this chapter, but is not required to remit taxes monthly in  
199 accordance with Section [59-12-108](#), and that converts tangible personal property into real  
200 property.

201 (B) Subject to Subsections (4)(e)(ii)(C) and (D), a qualifying purchaser may remit the  
202 taxes due under this chapter on tangible personal property for which the qualifying purchaser  
203 claims an exemption as allowed under Subsection [59-12-104](#)(23) or (25) based on the period in  
204 which the qualifying purchaser receives payment, in accordance with Subsection (4)(e)(ii)(C),  
205 for the conversion of the tangible personal property into real property.

206 (C) A qualifying purchaser remitting taxes due under this chapter in accordance with  
207 Subsection (4)(e)(ii)(B) shall remit an amount equal to the total amount of tax due on the  
208 qualifying purchaser's purchase of the tangible personal property that was converted into real  
209 property multiplied by a fraction, the numerator of which is the payment received in the period  
210 for the qualifying purchaser's sale of the tangible personal property that was converted into real  
211 property and the denominator of which is the entire sales price for the qualifying purchaser's  
212 sale of the tangible personal property that was converted into real property.

213 (D) A qualifying purchaser may remit taxes due under this chapter in accordance with

214 this Subsection (4)(e)(ii) only if the books and records that the qualifying purchaser keeps in  
215 the qualifying purchaser's regular course of business identify by reasonable and verifiable  
216 standards that the tangible personal property was converted into real property.

217 (f) (i) Subject to Subsection (4)(f)(ii) and in accordance with Title 63G, Chapter 3,  
218 Utah Administrative Rulemaking Act, the commission may by rule extend the time for making  
219 returns and paying the taxes.

220 (ii) An extension under Subsection (4)(f)(i) may not be for more than 90 days.

221 (g) The commission may require returns and payment of the tax to be made for other  
222 than quarterly periods if the commission considers it necessary in order to ensure the payment  
223 of the tax imposed by this chapter.

224 (h) (i) The commission may require a seller that files a simplified electronic return with  
225 the commission to file an additional electronic report with the commission.

226 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
227 commission may make rules providing:

228 (A) the information required to be included in the additional electronic report described  
229 in Subsection (4)(h)(i); and

230 (B) one or more due dates for filing the additional electronic report described in  
231 Subsection (4)(h)(i).

232 (5) (a) As used in this Subsection (5) and Subsection (6)(b), " voluntary seller" means a  
233 seller that is:

234 (i) registered under the agreement;

235 (ii) described in Subsection (2)(d); and

236 (iii) not a:

237 (A) model 1 seller;

238 (B) model 2 seller; or

239 (C) model 3 seller.

240 (b) (i) Except as provided in Subsection (5)(b)(ii), a tax a voluntary seller collects in  
241 accordance with Subsection (2)(d) is due and payable:

242 (A) to the commission;

243 (B) annually; and

244 (C) on or before the last day of the month immediately following the last day of each

245 calendar year.

246 (ii) The commission may require that a tax a voluntary seller collects in accordance  
247 with Subsection (2)(d) be due and payable:

248 (A) to the commission; and

249 (B) on the last day of the month immediately following any month in which the seller  
250 accumulates a total of at least \$1,000 in agreement sales and use tax.

251 (c) (i) If a voluntary seller remits a tax to the commission in accordance with  
252 Subsection (5)(b), the voluntary seller shall file a return:

253 (A) with the commission;

254 (B) with respect to the tax;

255 (C) containing information prescribed by the commission; and

256 (D) on a form prescribed by the commission.

257 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
258 commission shall make rules prescribing:

259 (A) the information required to be contained in a return described in Subsection  
260 (5)(c)(i); and

261 (B) the form described in Subsection (5)(c)(i)(D).

262 (d) A tax a voluntary seller collects in accordance with this Subsection (5) shall be  
263 calculated on the basis of the total amount of taxable transactions under Subsection  
264 59-12-103(1) the voluntary seller completes, including:

265 (i) a cash transaction; and

266 (ii) a charge transaction.

267 (6) (a) Except as provided in Subsection (6)(b), a tax a seller that files a simplified  
268 electronic return collects in accordance with this chapter is due and payable:

269 (i) monthly on or before the last day of the month immediately following the month for  
270 which the seller collects a tax under this chapter; and

271 (ii) for the month for which the seller collects a tax under this chapter.

272 (b) A tax a voluntary seller that files a simplified electronic return collects in  
273 accordance with this chapter is due and payable as provided in Subsection (5).

274 (7) (a) On each vehicle sale made by other than a regular licensed vehicle dealer, the  
275 purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject to

276 titling or registration under the laws of this state.

277 (b) The commission shall collect the tax described in Subsection (7)(a) when the  
278 vehicle is titled or registered.

279 (8) If any sale of tangible personal property or any other taxable transaction under  
280 Subsection 59-12-103(1), is made by a wholesaler to a retailer:

281 (a) the wholesaler is not responsible for the collection or payment of the tax imposed  
282 on the sale; and

283 (b) the retailer is responsible for the collection or payment of the tax imposed on the  
284 sale if:

285 (i) the retailer represents that the tangible personal property, product transferred  
286 electronically, or service is purchased by the retailer for resale; and

287 (ii) the tangible personal property, product transferred electronically, or service is not  
288 subsequently resold.

289 (9) If any sale of property or service subject to the tax is made to a person prepaying  
290 sales or use tax in accordance with Title 63M, Chapter 5, Resource Development Act, or to a  
291 contractor or subcontractor of that person:

292 (a) the person to whom such payment or consideration is payable is not responsible for  
293 the collection or payment of the sales or use tax; and

294 (b) the person prepaying the sales or use tax is responsible for the collection or  
295 payment of the sales or use tax if the person prepaying the sales or use tax represents that the  
296 amount prepaid as sales or use tax has not been fully credited against sales or use tax due and  
297 payable under the rules promulgated by the commission.

298 (10) (a) For purposes of this Subsection (10):

299 (i) Except as provided in Subsection (10)(a)(ii), "bad debt" means the same as that term  
300 is defined in Section 166, Internal Revenue Code.

301 (ii) "Bad debt" does not include:

302 (A) an amount included in the purchase price of tangible personal property, a product  
303 transferred electronically, or a service that is:

304 (I) not a transaction described in Subsection 59-12-103(1); or

305 (II) exempt under Section 59-12-104;

306 (B) a financing charge;

- 307 (C) interest;
- 308 (D) a tax imposed under this chapter on the purchase price of tangible personal  
309 property, a product transferred electronically, or a service;
- 310 (E) an uncollectible amount on tangible personal property or a product transferred  
311 electronically that:
- 312 (I) is subject to a tax under this chapter; and
- 313 (II) remains in the possession of a seller until the full purchase price is paid;
- 314 (F) an expense incurred in attempting to collect any debt; or
- 315 (G) an amount that a seller does not collect on repossessed property.
- 316 (b) (i) To the extent an amount remitted in accordance with Subsection (4)(d) later  
317 becomes bad debt, a seller may deduct the bad debt from the total amount from which a tax  
318 under this chapter is calculated on a return.
- 319 (ii) A qualifying purchaser, as defined in Subsection (4)(e)(ii)(A), may deduct from the  
320 total amount of taxes due under this chapter the amount of tax the qualifying purchaser paid on  
321 the qualifying purchaser's purchase of tangible personal property converted into real property to  
322 the extent that:
- 323 (A) tax was remitted in accordance with Subsection (4)(e) on that tangible personal  
324 property converted into real property;
- 325 (B) the qualifying purchaser's sale of that tangible personal property converted into real  
326 property later becomes bad debt; and
- 327 (C) the books and records that the qualifying purchaser keeps in the qualifying  
328 purchaser's regular course of business identify by reasonable and verifiable standards that the  
329 tangible personal property was converted into real property.
- 330 (c) A seller may file a refund claim with the commission if:
- 331 (i) the amount of bad debt for the time period described in Subsection (10)(e) exceeds  
332 the amount of the seller's sales that are subject to a tax under this chapter for that same time  
333 period; and
- 334 (ii) as provided in Section [59-1-1410](#).
- 335 (d) A bad debt deduction under this section may not include interest.
- 336 (e) A bad debt may be deducted under this Subsection (10) on a return for the time  
337 period during which the bad debt:

- 338 (i) is written off as uncollectible in the seller's books and records; and
- 339 (ii) would be eligible for a bad debt deduction:
  - 340 (A) for federal income tax purposes; and
  - 341 (B) if the seller were required to file a federal income tax return.
- 342 (f) If a seller recovers any portion of bad debt for which the seller makes a deduction or
- 343 claims a refund under this Subsection (10), the seller shall report and remit a tax under this
- 344 chapter:
  - 345 (i) on the portion of the bad debt the seller recovers; and
  - 346 (ii) on a return filed for the time period for which the portion of the bad debt is
  - 347 recovered.
    - 348 (g) For purposes of reporting a recovery of a portion of bad debt under Subsection
    - 349 (10)(f), a seller shall apply amounts received on the bad debt in the following order:
      - 350 (i) in a proportional amount:
        - 351 (A) to the purchase price of the tangible personal property, product transferred
        - 352 electronically, or service; and
        - 353 (B) to the tax due under this chapter on the tangible personal property, product
        - 354 transferred electronically, or service; and
        - 355 (ii) to:
          - 356 (A) interest charges;
          - 357 (B) service charges; and
          - 358 (C) other charges.
      - 359 (h) A seller's certified service provider may make a deduction or claim a refund for bad
      - 360 debt on behalf of the seller:
        - 361 (i) in accordance with this Subsection (10); and
        - 362 (ii) if the certified service provider credits or refunds the entire amount of the bad debt
        - 363 deduction or refund to the seller.
          - 364 (i) A seller may allocate bad debt among the states that are members of the agreement
          - 365 if the seller's books and records support that allocation.
          - 366 (11) (a) A seller may not, with intent to evade any tax, fail to timely remit the full
          - 367 amount of tax required by this chapter.
          - 368 (b) A violation of this section is punishable as provided in Section [59-1-401](#).

369 (c) Each person that fails to pay any tax to the state or any amount of tax required to be  
370 paid to the state, except amounts determined to be due by the commission under Chapter 1,  
371 Part 14, Assessment, Collections, and Refunds Act, or Section 59-12-111, within the time  
372 required by this chapter, or that fails to file any return as required by this chapter, shall pay, in  
373 addition to the tax, penalties and interest as provided in Sections 59-1-401 and 59-1-402.

374 (d) For purposes of prosecution under this section, each quarterly tax period in which a  
375 seller, with intent to evade any tax, collects a tax and fails to timely remit the full amount of the  
376 tax required to be remitted constitutes a separate offense.

377 Section 2. Section 59-12-107.6 is amended to read:

378 **59-12-107.6. Marketplace facilitator collection, remittance, and payment of sales**  
379 **tax obligation -- Marketplace seller collection, remittance, and payment of sales tax**  
380 **obligation -- Liability for collection.**

381 (1) A marketplace facilitator shall pay or collect and remit taxes imposed by this  
382 chapter in accordance with Section 59-12-107:

383 (a) if the marketplace facilitator meets one or more of the criteria provided for in  
384 Subsection 59-12-107(2)(a) or (b); and

385 (b) on the sales the marketplace facilitator made on the marketplace facilitator's own  
386 behalf.

387 (2) (a) A marketplace facilitator shall pay or collect and remit taxes imposed by this  
388 chapter in accordance with Subsection (3) if the marketplace facilitator, in the previous  
389 calendar year or the current calendar year, makes sales of tangible personal property, products  
390 transferred electronically, or services on the marketplace facilitator's own behalf or facilitates  
391 sales on behalf of one or more marketplace sellers[~~-(i)~~] that exceed \$100,000[~~;-or~~].

392 [~~(ii) in 200 or more separate transactions.~~]

393 (b) For purposes of determining if a marketplace facilitator [~~meets or exceeds one or~~  
394 ~~both thresholds~~] exceeds the threshold described in this Subsection (2), a marketplace  
395 facilitator shall separately total:

396 (i) the marketplace facilitator's sales; and

397 (ii) any sales the marketplace facilitator makes or facilitates for a marketplace seller.

398 (c) A marketplace facilitator without a physical presence in this state shall begin  
399 collecting and remitting the taxes imposed by this chapter no later than the first day of the

400 calendar quarter that is at least 60 days after the day on which the marketplace facilitator  
401 [~~meets or exceeds either~~] exceeds the threshold described in Subsection (2)(a).

402 (3) A marketplace facilitator described in Subsection (2) shall pay or collect and remit  
403 taxes imposed by this chapter for each sale that the marketplace facilitator:

404 (a) makes on the marketplace facilitator's own behalf; or

405 (b) makes or facilitates on behalf of a marketplace seller, regardless of:

406 (i) whether the marketplace seller has an obligation to pay or collect and remit taxes  
407 under Section 59-12-107;

408 (ii) whether the marketplace seller would have been required to pay or collect and  
409 remit taxes under Section 59-12-107 if the marketplace facilitator had not facilitated the sale;  
410 or

411 (iii) the amount of the sales price or the purchase price that accrues to or benefits the  
412 marketplace facilitator, the marketplace seller, or any other person.

413 (4) A marketplace facilitator shall comply with the procedures and requirements in this  
414 chapter and Chapter 1, General Taxation Policies, for sellers required to pay or collect and  
415 remit taxes except that the marketplace facilitator shall segregate, in the marketplace  
416 facilitator's books and records:

417 (a) the sales that the marketplace facilitator makes on the marketplace facilitator's own  
418 behalf; and

419 (b) the sales that the marketplace facilitator makes or facilitates on behalf of one or  
420 more marketplace sellers.

421 (5) (a) The commission may audit the marketplace facilitator for sales made or  
422 facilitated through the marketplace facilitator's marketplace on behalf of one or more  
423 marketplace sellers.

424 (b) The commission may not audit the marketplace seller for sales made or facilitated  
425 through the marketplace facilitator's marketplace on the marketplace seller's behalf.

426 (6) Nothing in this section prohibits a marketplace facilitator from providing in a  
427 marketplace facilitator's agreement with a marketplace seller for the recovery of taxes, and any  
428 related interest or penalties to the extent that a tax, interest, or penalty is assessed by the state in  
429 an audit of the marketplace facilitator on a retail sale:

430 (a) that a marketplace facilitator makes or facilitates on behalf of a marketplace seller;

431 and

432 (b) for which the marketplace facilitator relied on incorrect or incomplete information  
433 provided by the marketplace seller.

434 ~~[(7) (a) Subject to Subsections (7)(b) and (c), a marketplace facilitator is not liable for~~  
435 ~~failing to collect the taxes under this chapter for a sale on which the marketplace facilitator~~  
436 ~~failed to collect taxes if the marketplace facilitator demonstrates, to the satisfaction of the~~  
437 ~~commission, that:]~~

438 ~~[(i) the marketplace facilitator made or facilitated the sale through the marketplace~~  
439 ~~facilitator's marketplace on or before December 31, 2022;]~~

440 ~~[(ii) the marketplace facilitator made or facilitated the sale on behalf of a marketplace~~  
441 ~~seller and not on behalf of the marketplace facilitator;]~~

442 ~~[(iii) the marketplace facilitator and the marketplace seller are not affiliates; and]~~

443 ~~[(iv) the failure to collect taxes was due to a good faith error other than an error in~~  
444 ~~sourcing;]~~

445 ~~[(b) For purposes of Subsection (7)(a):]~~

446 ~~[(i) for sales made or facilitated during the 2019 or 2020 calendar year, the marketplace~~  
447 ~~facilitator is not liable for the amount the marketplace facilitator fails to collect due to error that~~  
448 ~~is equal to the error rate, but not to exceed a 7% error rate;]~~

449 ~~[(ii) for sales made or facilitated during the 2021 calendar year, the marketplace~~  
450 ~~facilitator is not liable for the amount the marketplace facilitator fails to collect due to error that~~  
451 ~~is equal to the error rate, but not to exceed a 5% error rate; and]~~

452 ~~[(iii) for sales made or facilitated during the 2022 calendar year, the marketplace~~  
453 ~~facilitator is not liable for the amount the marketplace facilitator fails to collect due to error that~~  
454 ~~is equal to the error rate, but not to exceed a 3% error rate;]~~

455 ~~[(c) The commission shall calculate the percentages described in Subsection (7)(b):]~~

456 ~~[(i) using the total taxes due on sales that:]~~

457 ~~[(A) a marketplace facilitator made or facilitated in this state on behalf of one or more~~  
458 ~~marketplace sellers during the calendar year that the sale for which the marketplace facilitator~~  
459 ~~seeks relief was made or facilitated; and]~~

460 ~~[(B) are sourced to the state; and]~~

461 ~~[(ii) not including sales that the marketplace facilitator or the marketplace facilitator's~~

462 ~~affiliates directly made during the same calendar year.]~~

463       ~~[(8)]~~ (7) A marketplace seller shall pay or collect and remit taxes imposed by this  
464 chapter for a sale of tangible personal property, a product transferred electronically, or a service  
465 that the marketplace seller makes other than through a marketplace facilitator if:

466           (a) the sale is sourced to this state; and

467           (b) the marketplace seller's sales in this state, other than through a marketplace  
468 facilitator, in the previous calendar year or the current calendar year~~[-(f)]~~ exceed \$100,000~~[-~~  
469 ~~or]~~.

470       ~~[(ii) occur in 200 or more separate transactions.]~~

471       ~~[(9)]~~ (8) (a) A marketplace seller may not pay or collect and remit taxes imposed by  
472 this chapter for any sale for which a marketplace facilitator is required to pay or collect and  
473 remit.

474           (b) A marketplace seller is not liable for a marketplace facilitator's failure to pay or  
475 collect and remit, or the marketplace facilitator's underpayment of, taxes imposed by this  
476 chapter for any sale for which a marketplace facilitator is required to pay or collect and remit  
477 the taxes imposed by this chapter.

478       ~~[(10)]~~ (9) (a) A purchaser of tangible personal property, a product transferred  
479 electronically, or a service may file a claim for a refund with the marketplace facilitator if the  
480 purchaser overpaid taxes imposed under this chapter.

481           (b) No person may bring a class action against a marketplace facilitator in any court of  
482 the state on behalf of purchasers arising from or in any way related to an overpayment of taxes  
483 collected and remitted on sales made or facilitated by the marketplace facilitator on behalf of a  
484 marketplace seller, regardless of whether such claim is characterized as a tax refund claim.

485       ~~[(11)]~~ (10) Nothing in this section affects the obligation of a purchaser to remit the use  
486 tax described in Subsection 59-12-107(2)(f) on any sale for which a marketplace facilitator or  
487 marketplace seller failed to collect and remit a tax imposed by this chapter.

488       Section 3. **Effective date.**

489       This bill takes effect on July 1, 2024.